

May 13, 2003: "Reviewing the Sudan Peace Act Report."

SUBCOMMITTEE ON AFRICA

HOUSE COMMITTEE ON INTERNATIONAL RELATIONS

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Following the Commission's establishment by the International Religious Freedom Act of 1998, Sudan was one of the first three countries to be the focus of the Commission's attention. For the past three years, the Commission has identified Sudan as the world's most violent abuser of the right to freedom of religion and belief. The Commission has concluded that the government of Sudan is responsible for egregious human rights abuses, including the forcible displacement of civilian populations, widespread bombing of civilian and humanitarian targets, abduction and enslavement by government-sponsored militias, banning or impeding humanitarian relief operations, and severe restrictions on religious freedom. The Commission has made policy recommendations on Sudan in each of its annual reports, including in its 2003 annual report released today, in addition to issuing a special report on Sudan in April 2002.

Several of these recommendations have been adopted. President Bush prominently raised the situation in Sudan in a major address in May 2001. The President appointed former Senator John Danforth as Special Envoy for Sudan in September 2001. The Administration has also taken several steps to alleviate the humanitarian crisis of the Sudanese people, including designation of U.S. Agency for International Development (USAID) Administrator Andrew Natsios as Special Humanitarian Coordinator for Sudan and several reforms undertaken by USAID. All of these efforts implement directly or indirectly recommendations of this Commission.

Progress of Peace Negotiations

On April 2, 2003, Sudanese President Omar Hassan El-Bashir and Sudan People's Liberation Movement/Army (SPLM/A) Chairman John Garang issued a joint communiqué suggesting that a final peace agreement would be reached by the end of June. President Bush reaffirmed the commitment of the U.S. government "to support the implementation of a comprehensive agreement when it is finalized this June." According to a press report, an unnamed State Department official has gone so far as to declare an impending agreement a "diplomatic touchdown." Furthermore, a letter last month from the government of Sudan (GOS) to concerned American citizens dismissed concerns about the progress of peace negotiations and again committed to a just peace by June.

The Commission is perplexed at this level of optimism when so many significant issues remain to be negotiated between the parties. Nevertheless, if an agreement is not reached by the end of June, the President and Congress should re-evaluate if the GOS has engaged in good faith negotiations to achieve a permanent peace agreement. If it is determined that the GOS has not negotiated in good faith, then the President should consider initiating those measures laid out in Section 6 (b)(2) of the Sudan Peace Act. The Commission will continue to monitor closely the progress of peace negotiations.

The Commission is also concerned that the GOS has not been held accountable for significant violations of agreements it has made with the SPLM/A as part of the ongoing peace negotiations. The February 2003 report by the Civilian Protection Monitoring Team (CPMT) clearly states that the GOS violated these agreements on numerous occasions by launching lethal attacks on civilian targets. While the United States publicly condemned these attacks, the Commission is concerned that the GOS has not been held accountable for these actions. We fear the GOS will conclude that it can violate its agreements with without cost while continuing to negotiate in peace talks.

Indeed, reports from the CPMT indicate that the GOS is using this period during the cease-fire to rearm and build-up its military presence in garrison towns in southern Sudan from which it could launch offensives should the peace talks end in failure. The Administration should demand a significant reduction of GOS forces and military equipment in southern Sudan. As discussed below, the April 21 State Department report to Congress did not adequately address the increase in GOS troop levels in the south since the signing of the Machakos Accord or GOS arms purchases during the same time-period.

Moreover, the Commission is extremely concerned by reports that the CPMT has been thwarted by the GOS in carrying out its mandate. We have received reports that the GOS has, without justification, grounded the CPMT plane beginning on March 7. The Commission urges this Committee to determine if full CPMT operations have resumed. If not, the U.S. government should take appropriate steps to ensure that CPMT resumes its operations. The extensive use of CPMT information by the State Department in its reporting under the Sudan Peace Act illustrates how critical that body is to advancing peace negotiations and assessing the progress of those negotiations, as required under the Act.

State Department Reporting under the Sudan Peace Act

The Commission credits the Administration for becoming engaged on the issue of bringing peace to the people of Sudan, for working toward a peace agreement, and for other salutary aspects of its

policies on Sudan. Nevertheless, the State Department's reporting is deficient in several important respects under the requirements of the Sudan Peace Act. While the reports note GOS violations of ceasefire commitments and state that these violations must stop, they do not give an accurate picture of the situation, nor do they articulate consequences for further violations. In particular, the reporting does not adequately address the fear that the government of Sudan is delaying progress in peace talks in order to advance its military might and strategic position vis-à-vis the SPLM/A, thereby seeking a military victory over the south rather than a negotiated peace.

Several specific issues are discussed below regarding the State Department's reports required under Sections 8 and 11 of the Sudan Peace Act.

Section 8 - Required Reporting Regarding the Conflict in Sudan

Financing and Construction of Oil Infrastructure and Pipeline.

Very little information is provided in the report on Khartoum's military expansion made possible by growing oil revenues. Despite credible reports, the government's acquisition and use of increasingly advanced weapons systems and expansion of its military are not addressed. Troop and material movements of the GOS in the south since the beginning of the Machakos Accord are also not adequately described, as numerous reports indicate that the GOS has increased its military presence in the south during this period.

Effects of Oil Infrastructure on Local Populations.

The reporting on displacement of civilians from oil areas is weak. It presents no conclusion by the State Department on the GOS' policy regarding forced displacement from oil areas; it merely repeats a select few of the reports of others. For example, the report does not cite the conclusion of the UN Special Rapporteur on human rights in Sudan, Gerhart Baum, that the GOS has been using oil revenues to fund its war effort and that oil exploitation has clearly led to a worsening of the human rights situation, including regarding religious freedom, in Sudan. Moreover, the State Department fails to cite many of its own conclusions from its previous human rights reports. The State Department has stated in its 2002 Sudan Country Report on Human Rights Practices that the GOS continued its efforts to strengthen control over oil producing areas in Western Upper Nile. The human rights report describes how GOS forces routinely killed, injured, and displaced civilians, and intentionally destroyed clinics and dwellings during offensive operations in these areas. The State Department also concluded that there were confirmed reports of government-allied militia intentionally attacking noncombatant

civilians in oil areas, looting their possessions, and destroying their villages.

Extent to Which Oil Financing Was Secured in the United States or With Involvement of United States Citizens.

With respect to U.S. financing of oil development in Sudan, the report merely restates provisions of U.S. law that prohibit U.S. persons from engaging in certain financial transactions concerning Sudan. However, it does not discuss the loophole in U.S. sanctions law previously identified by this Commission. According to the interpretation of the Sudanese Sanctions Regulations by the Treasury Department's Office of Foreign Assets Control, a U.S. person may purchase shares offered by a foreign company that does business in Sudan so long as the proceeds are not "earmarked" for a project in Sudan and the company's business in Sudan is not a predominant part of its overall business.^[i] Indeed, one NGO has reported that a major partner in the consortium operating Sudan's largest producing oil field, Petronas, the Malaysian state oil company, has raised money through a debt offering in the United States as recently as last year. The State Department's report also does not mention that several of the foreign companies involved in Sudan oil list their shares on U.S. stock exchanges.

Extent of Aerial Bombardment by the Government of Sudan.

This section of the report incorrectly describes a lull in air attacks, and fighting in general, from July to September 2002. The GOS and its militias went on a major offensive in Western Upper Nile at the end of July, about a week after the government signed the Machakos protocol. These attacks were reportedly supported by helicopter gunships, and displaced over 100,000 people.

Section 11 - Required Reporting on Information on War Crimes, Crimes Against Humanity, Genocide, and Other Violations of International Humanitarian Law

In this report, the State Department does not adequately address the concerns of Congress that acts of genocide, and possibly other international crimes, have been committed by the GOS and that the United States should amass a body of information on these crimes.

The Department has collected and reviewed information for this report only from January 2002 to present. The report itself focuses only on the period from the passage of the Sudan Peace Act (October 21, 2002) through March 2003. However, the Act does not specify a timeframe for this report. The Commission has strongly recommended accountability for international crimes, and

collection of this information is a significant aspect of a just peace. The Commission believes that this report should cover the period beginning at least as far back as the initial ceasefire agreement in early 2002. In Sudan, with difficult communication and travel conditions, it can take several months for information about atrocities to emerge and be investigated and verified. To start reporting on incidents no earlier than October 21, 2002 minimizes a long-standing pattern of government violations. Congress should ensure that future reports cover the complete relevant time period.

The Department states that for this report it collected and reviewed "available material relevant to the requirement," but it does not appear to have conducted any independent research either in southern Sudan or among the substantial refugee populations in neighboring countries. In addition, no findings or conclusions are presented in the report, and there is no analysis of the data that is presented in light of the applicable legal norms pertaining to war crimes, crimes against humanity, or genocide.

Moreover, there is a misleading tendency throughout the report to present an equivalency between the actions of the GOS and the SPLM/A, especially the sections on ground offensives and on slavery/abductions. For example, the report refers to an investigation of the International Eminent Persons Group in May 2002 that concluded that both the GOS and SPLM were guilty of forced abductions. However, it does not go into any detail about the extent to which both parties were guilty.

Recommendations:

The Commission continues to propose the following recommendations as issued in its 2003 annual report released earlier today. The U.S. government should:

- urge that, because Sudan is to continue in the near future as a unified State, national institutions such as the military, law enforcement, and the highest level of the judiciary, be secular;
- oppose the application of Sharia law to non-Muslims wherever they may reside in the country;
- insist that the capital of a reunited north and south Sudan, most likely Khartoum, be a place where people of all faiths can worship freely and where the laws are reflective and respectful of all religions and legal traditions in Sudan;
- ensure that adequate funding is supplied to the Civilian Protection Monitoring Team (CPMT);
- insist that the concerns of the peoples in the contested areas of the Nuba Mountains, Abyei, and Southern Blue Nile be fairly and comprehensively resolved and support the repatriation of civilians displaced from these areas;

- disperse funding quickly for humanitarian purposes that will be supportive of the peace process and immediately release funding to build civil society and to promote economic development in southern Sudan; Congress should appropriate immediately the \$100 million in aid this year for southern Sudan, as well as in FY 2004 and 2005, as authorized in the Sudan Peace Act "to prepare the population for peace and democratic governance;"
- continue to keep in place existing sanctions on Sudan and refrain from upgrading diplomatic relations with the government in Khartoum;
- continue to push for access for delivery of humanitarian assistance and expand humanitarian relief where it is most needed; and
- build upon the work of the International Eminent Persons Group (IEPG) to combat and end the terrible practice of abduction and enslavement by government-sponsored militias, such as establishing a permanent monitoring mechanism.

[i] For more information, see the USCIRF annual reports of 2000, pp. 29-32, and 2001, pp. 126-127.